

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MACEO ALI SPATES, #1199722,
Petitioner

v.

Civil Action No. 2:11cv284

HAROLD W. CLARKE, DIRECTOR,
Virginia Department of Corrections,
Respondent.

DIRECTOR'S SUPPLEMENT
TO MOTION TO ALTER OR AMEND

The respondent, the Director of the Virginia Department of Corrections, by counsel, hereby seeks to supplement his motion to alter or amend the Court's August 14, 2012, Final Order and Judgment (ECF Nos. 27 and 28) pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, for the following reasons:

1. This Court's Final Order and Judgment stated as follows:

It is, therefore, ORDERED that the petition be GRANTED as to Ground (3) of the petition, to the extent that [this] Court remands the case to the Circuit Court of the City of Virginia Beach for a new trial within 180 days of this Court's final judgment order. It is further ORDERED that Petitioner remain in custody of the Department of Corrections until his new trial, but if the Circuit Court fails to re-try Petitioner within 180 days of this Court's final judgment order, that Petitioner be released from custody at the end of the 180 days.

2. On September 11, 2102, the Director timely moved this Court to alter or amend its August 14, 2012, order and judgment, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and dismiss the petition, for the reasons stated in his memorandum in support of the motion. (ECF Nos. 27 and 28). This Court has not yet ruled on the motion.

3. The Director had not expressly sought any modification of the time in

which to retry Spates in his original motion pursuant to Rule 59(e) because the filing of a such a motion necessarily sought relief from compliance with the original order. The Director also had anticipated that if this Court were to deny the motion, sufficient time to comply, or to seek appeal, nevertheless would remain after this Court ruled, or that this Court would otherwise allow a reasonable time after its ruling for any new trial to begin.

4. However, calculating 180 days from this Court's August 14, 2012, order and judgment would require trial by February 10, 2013. The charges at issue, abduction, rape, unlawful wounding during the commission of a felony, and petit larceny, are a matter of substantial importance to the Commonwealth that should not be precluded because of the circumstances that have caused the delay.

5. Therefore, out of an abundance of caution, the Director would therefore supplement his original motion to state expressly that he would move this Court, if it were to deny the Director's motion, to modify the requirement for a new trial to provide that the 180-day period would begin with this Court's ruling on the Director's motion, or otherwise to permit the new trial to begin within a reasonable time after this Court's ruling on the motion.

6. Accordingly, the Director renews his motion that the Court should alter or amend its decision and dismiss Spates's petition for a writ of habeas corpus; or in the alternative, that it would alter or amend its Order to require that the new trial in the Circuit Court of the City of Virginia Beach begin within 180 days of this Court's ruling on the Director's motion, or otherwise to permit the new trial to begin within a reasonable time after this Court's ruling on the Director's motion.

Respectfully submitted,

Harold W. Clarke, Director,
Virginia Department of Corrections,
Respondent herein.

By _____/s/_____
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CERTIFICATE OF SERVICE

I certify that on January 17, 2103, I electronically filed the foregoing Notice with the Clerk of the Court using the CM/ECF system; and I certify that I have mailed the document and a copy of the Notice of Electronic Filing (NEF) by United States Postal Service to the following CM/ECF non-participant: Maceo Ali Spates, #1199722, Augusta Correctional Center, 1821 Estaline Valley Road, Craigsville, Virginia, 24430, Petitioner.

_____/s/_____
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